

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

REBECCA L HULL  
642 S PENNSYLVANIA APT 1  
MASON CITY IA 50401

EXPRESS SERVICES INC  
PO BOX 720660  
OKLAHOMA CITY OK 73172

Appeal Number: 04A-UI-02253-RT  
OC: 01-18-04 R: 02  
Claimant: Appellant (2-R)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Rebecca L. Hull, filed a timely appeal from an unemployment insurance decision dated February 18, 2004, reference 02, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on March 30, 2004 with the claimant participating. Jamie Mullins, Staffing Consultant, participated in the hearing for the employer, Express Services, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. The hearing was originally scheduled for March 18, 2004 at 9:00 a.m. and rescheduled at the claimant's request.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed off and on by the employer since July 2001. The employer is a temporary employment agency. The last assignment in 2003 was with Assa Abloy Door Group, which began on October 15, 2003. This assignment was a temp-to-hire position. The claimant satisfactorily completed this assignment in the middle of December 2003 when she was actually hired by the assignee, Assa Abloy Door Group. However, the claimant was then discharged from that employment in the end of December 2003. The claimant only worked two weeks. However, when the claimant filed a claim for unemployment insurance benefits effective January 18, 2004, she failed to indicate that her most recent employer was Assa Abloy Door Group and indicated rather that her most recent employer was the employer herein, Express Services, Inc. However, her employment with the employer ended in mid December 2003. The claimant then went back to the employer on January 13, 2004 and reactivated her status but nothing was then available. The employer made an offer of employment to the claimant on January 15, 2004 but the claimant refused. The claimant has no telephone and the employer is unable to contact the claimant directly but rather leaves messages for the claimant. The employer left numerous messages for the claimant about potential positions but the claimant never returned the calls or contacted the employer.

Eventually, the claimant was given a new assignment by the employer with Alexander Batteries beginning March 15, 2004. This assignment was to last several months but ended after two days when the assignee, Alexander Batteries, informed the employer that the claimant should not return. The employer notified the claimant of this on March 17, 2004. Although the claimant had received earnings for her work on March 15 and March 16, 2004, the claimant did not report those earnings in her weekly claim for benefit week ending March 20, 2004, rather reporting no earnings. The employer still has assignments for the claimant but has some difficulty in reaching the claimant. Iowa Workforce Development records do indicate earnings for the claimant in the fourth quarter of 2003 from Assa Abloy Door Group in the amount of \$312.00. The claimant filed for benefits effective January 18, 2004 but has received no benefits. The claimant has filed weekly claims for eleven weeks from benefit week ending January 24, 2004 to benefit week ending April 3, 2004, showing no earnings for any of those weeks.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. The claimant's separation from the employer in mid December 2003 was potentially disqualifying but, because she left that employment to take other employment, which she did accept, the claimant is not automatically disqualified to receive unemployment insurance benefits. However, other issues have arisen during the hearing that need to be investigated and determined by Unemployment Insurance Services.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code Section 96.5-1-a provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The parties concede that the claimant left her employment voluntarily in mid December 2003 when she satisfactorily completed her assignment to Assa Abloy Door Group and became a full-time employee for that same employer. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The only reason given by the claimant for leaving her employment with the employer herein, Express Services, Inc., was to take a full-time position with Assa Abloy Door Group. This is not good cause attributable to the employer. However, because the claimant left her employment in good faith for the sole purpose of accepting this employment which she did accept and for whom she performed services, the claimant is not automatically disqualified to receive unemployment insurance benefits. However, any unemployment insurance benefits to which the claimant is entitled shall not be charged to the account of the employer herein but shall be charged to the unemployment compensation fund.

This matter must be remanded to Unemployment Insurance Services for an investigation and determination of several matters that arose during the hearing but for which the administrative law judge has no jurisdiction to decide. First, the claimant had a potentially disqualifying separation from Assa Abloy Door Group at the end of December 2003. An investigation and determination must be made as to whether this separation was disqualifying and the claimant would be disqualified to receive unemployment insurance benefits as a result. Further, during the hearing there was evidence that the claimant may not be able, available and earnestly and actively seeking work as required under Iowa Code Section 96.4-3 because she failed to report income for benefit week ending March 20, 2004 and was not available for phone calls from the employer, Express Services, Inc. Therefore, Unemployment Insurance Services should also do an investigation and determination as to whether the claimant is ineligible to receive unemployment insurance benefits because she is and was, at all material times hereto, not able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 and is not excused from those provisions. Finally, there is some evidence that the claimant was offered positions and refused them. An investigation and determination should also be made as to whether any offers of work were made to the claimant that were suitable and the claimant refused to accept those offers and would therefore be disqualified to receive unemployment insurance benefits pursuant to Iowa Code Section 96.5-3-a.

DECISION:

The representative's decision of February 18, 2004, reference 02, is reversed. The claimant voluntarily left her employment with the employer, Express Services, Inc., to accept other employment which she did accept and for which she performed services and therefore the claimant is not automatically disqualified to receive unemployment insurance benefits. However, in order to determine whether the claimant is entitled to receive unemployment insurance benefits, this matter must be remanded to Unemployment Insurance Services for an investigation and determination as to whether the claimant's separation from employment with Assa Abloy Door Group at the end of December 2003 was disqualifying and whether the claimant is further disqualified because she refused to accept suitable work and whether the claimant is ineligible to receive unemployment insurance benefits because at all material times hereto she was and is not able, available, and earnestly and actively seeking work and is not excused from such provisions.

REMAND:

This matter is remanded to Unemployment Insurance Services for an investigation and determination as to whether the claimant's separation from Assa Abloy Door Group at the end of December 2003 was disqualifying. Further, this matter is remanded for an investigation and determination as to whether the claimant is disqualified to receive unemployment insurance benefits because she refused to accept suitable work from the employer, Express Services, Inc. Finally, this matter is remanded for an investigation and determination as to whether the claimant is ineligible to receive unemployment insurance benefits because she is and was, at all material times hereto not able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 and is not excused from such provisions.

tjc/kjf